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No. 87-1007

In The

# Supreme Court of the United States

October Term, 1987

JAMES M. PICOZZI,

*Petitioner,*

v.

TERRANCE SANDALOW,
individually and in his official capacity
as Dean of the University of Michigan Law School,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

## BRIEF IN OPPOSITION

*– AND APPENDICES –*

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## COUNTER-STATEMENT OF QUESTION PRESENTED

WHETHER RESPONDENT LAW SCHOOL DEAN DENIED PETITIONER, A SUSPECTED DORMITORY ARSONIST, CLEARLY ESTABLISHED DUE PROCESS RIGHTS, WHERE PETITIONER WAS PHYSICALLY INCAPACITATED FROM ATTENDING SCHOOL, AND WHERE PETITIONER DECLINED REPEATED OFFERS OF AN ADMINISTRATIVE HEARING IF HE WISHED TO RE-ENROLL.

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ON PETITION FOR WRIT OF CERTIORARI
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## BRIEF IN OPPOSITION

### COUNTER-STATEMENT OF THE CASE

Petitioner, James Picozzi, a former University of Michigan Law School student suspected by the police of having committed arson by setting fire to his Law School dormitory room, filed this lawsuit against Respondent, University of Michigan Law School Dean Terrance Sandalow, and other University officials to obtain an unqualified letter of academic good standing, and for damages. The United States District Court for the Eastern District of Michigan, Hon. John Feikens, granted Respondent's motion for summary judgment; and

the Court of Appeals for the Sixth Circuit affirmed. The facts as related herein are based upon the record below.[1]

At approximately 4:00 a.m. on March 8, 1983, a fire broke out in the University of Michigan Law Quad dormitory room leased and occupied by Petitioner James Picozzi, a second-year law student. (Comp., ¶ 23)[2] Petitioner suffered flash burns and smoke inhalation, and eventually escaped the fire by jumping or falling from his third-story window, with resultant injuries to his back. (Comp., ¶¶ 23, 25) Petitioner was removed to the University of Michigan Hospital for treatment of his burns and back injury, and later removed to the University of Pittsburgh Hospital. (Comp.,

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[1] Petitioner's Statement of the Case is to a large degree premised on opinion, inference and innuendo, and *not* upon evidence contained in the record below. For example, the record below *nowhere* establishes, as Petitioner recites, that "unknown persons" opened the door to Petitioner's room and splashed gasoline inside (Petition for Certiorari, p. 6), or that the University of Michigan Law School Director of Housing "fabricated a story" to coax Petitioner to allow a search of his room (Petition for Certiorari, p. 3), or that the Law School Assistant Dean instructed a subordinate to "hide her role" in any manner from Petitioner (Petition for Certiorari, p. 4). These are not statements of fact, and are nowhere grounded in the record.

Furthermore, Petitioner refers extensively to matters adduced at an administrative hearing held in March, 1985. (See Petition for Certiorari, p. 2) The administrative hearing took place after the lawsuit was filed, and over a year after the latest action relevant to Petitioner's claim against Dean Sandalow: the Dean's refusal to accede to the requested issuance of an unqualified letter of academic good standing. Moreover, the record of that hearing is not part of the record of this proceeding. Consequently, most of the "facts" presented by Petitioner with regard to the events surrounding the fire have absolutely no bearing on the dispositive issue of whether he had a right, of constitutional magnitude, to an unqualified letter of academic standing.

[2] Citations to the record below refer to paragraphs and exhibits of the Complaint, denoted, "(Comp., ¶ __)" and "(Comp., Exh. __)." The Hearing Officer's Decision, dated August 22, 1985, is denoted, "(Hrg. Off. Dec.)."

¶¶ 24, 26, 27) He remained hospitalized until May, 1983, and incapacitated in a body cast until October, 1983. (Comp., ¶¶ 27, 28)

There is no dispute that the fire in Petitioner's dormitory room was of incendiary origin. (Comp., ¶ 31)

Ann Arbor Police Department investigators conducted a thorough investigation of the blaze. (Comp., Exh. A) The police investigators concluded that the evidence pointed to the Petitioner as the prime — indeed, the only — suspect.[3] (Comp., Exh. A, pp. 44, 115-16) Petitioner had had an unpleasant and contentious first year at Michigan Law School. (Hrg. Off. Dec., pp. 3-4) He was disliked by other law students, some of whom he contended had "harassed" him. (Comp., ¶ 21; Exh. A, p. 19) Authorities suspected that Petitioner had set the fire as part of a plot to facilitate his transfer to what he hoped would be more accommodating surroundings at Yale Law School, which had previously declined his admission. (Hrg. Off. Dec., pp. 4, 9, 10)

Meanwhile, Dean Sandalow was kept apprised of the progress and results of the ongoing police investigation of the blaze. (Terrance Sandalow Affidavit, ¶¶ 4, 5, App., *infra*, pp. A-1 – A-2) The Dean acted quickly to address the fears and rumors engulfing the Law School in the wake of the dormitory fire, first in a front-page statement published in the Law School newspaper, and later

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[3] Based on the evidence indicating Petitioner's responsibility for the fire, police investigators met with the Washtenaw County Prosecutor and requested authorization for the filing of a complaint charging Petitioner with the offense of arson. Acknowledging the evidence pointing to Petitioner's involvement, the Prosecutor nevertheless declined to press charges, for reasons unstated. (Comp., Exh. A, pp. 115-16; Exh. F) The case remained "inactive," although Petitioner remained the only suspect. (Comp., ¶ 63; Exh. A, p. 116) The Prosecutor advised investigators to seek a polygraph examination, to which Petitioner never consented. (Comp., Exh. A, p. 116; Exh. F)

in an open letter to the Law School community. (Comp., Exh's. G, I)

Several weeks after the fire, Respondent Sandalow initiated correspondence with Petitioner in order to ascertain his intentions regarding re-enrollment in the Law School, and to offer an administrative hearing should he decide to re-enroll. (Sandalow letter of May 13, 1983, App., *infra*, pp. B-1 – B-2)[4] The May 13 letter stated in part that if Petitioner took and passed a polygraph examination requested by the Ann Arbor Police, he would be eligible to re-enroll at Michigan Law School; otherwise, an administrative proceeding would be necessary in order to ascertain his responsibility for the March 8th fire. Dean Sandalow received no reply.

On June 29, 1983, Respondent Sandalow again wrote Petitioner, requesting a response, and suggesting that an administrative hearing, if necessary, should be held well before the commencement of the Fall, 1983 academic term. (Sandalow letter of June 29, 1983, App., *infra*, p. C-1) Again, there was no reply.

In July, 1983, letters from Petitioner and Assistant Dean Susan Eklund apparently crossed in the mail. Eklund wrote to Petitioner on July 20 requesting a response to Dean Sandalow's May 13 and June 29 letters. (Eklund letter of July 20, 1983, App., *infra*, p. D-1) Petitioner, meanwhile, wrote to Dean Sandalow, stating that he was not prepared to declare his intentions regarding continuing his studies, and added, "since I am still encased in the equivalent of a full-body cast, I hardly think you can protest this delay." (Picozzi letter of July 18, 1983, App., *infra*, p. E-1) Dean Sandalow replied on

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[4] Because Petitioner repeatedly mischaracterizes statements made by Dean Sandalow, the correspondence is hereafter set forth in full in the Appendices.

July 29, 1983, repeating his earlier request for a prompt response so that arrangements could be made for an administrative proceeding before the Fall term; the letter was returned unclaimed. (Sandalow letter of July 29, 1983, App., *infra*, p. F-1)

The Fall semester of the 1983-1984 school year commenced. Petitioner had not requested enrollment for the Fall semester (he could not have enrolled then had he done so, because he was physically incapacitated). (Comp., ¶¶ 28, 85) Nor had he requested an administrative hearing.

Finally, in early November, 1983, Petitioner wrote Dean Sandalow and requested, not re-enrollment, but a letter reflecting his academic standing. (Picozzi letter of November 7, 1983, App., *infra*, p. G-1)

Dean Sandalow replied on November 16, 1983, sending a transcript and explaining that his understanding of Petitioner's status was that he had withdrawn from the Law School while in good academic standing, but that a question remained regarding his eligibility to re-enroll. Petitioner's eligibility to re-enroll could be determined, if he did not take and pass a polygraph examination as requested by the police, by an administrative proceeding. (Sandalow letter of November 16, 1983, App., *infra*, pp. H-1 – H-2)

On November 23, 1983, Petitioner replied, demanding that an unqualified letter of "good academic standing" be sent to the Dean of the Yale Law School. (Picozzi letter of November 23, 1983, App., *infra*, p. I-1) Dean Sandalow promptly answered, stating his willingness to write that Petitioner had withdrawn while in good academic standing, and also making clear his unwillingness to mislead the Yale Law School Dean by omitting the additional fact that there was a ques-

tion regarding Petitioner's eligibility to re-enroll at Michigan Law School. (Sandalow letter of November 29, 1983, App., *infra*, p. J-1)[5] On December 5, 1983, Petitioner replied, again demanding an unqualified letter of good standing. (Picozzi letter of December 5, 1983, App., *infra*, p. K-1) Dean Sandalow again responded, this time offering to send a specific qualified letter, a draft copy of which was enclosed. (Sandalow letter of December 13, 1983 and enclosure, App., *infra*, pp. L-1 – L-2)

Petitioner responded on December 26, 1983, indicating that he would terminate the correspondence and "pursue this matter through more influential channels with other University of Michigan officials." (Picozzi letter of December 26, 1983, App., *infra*, pp. M-1 – M-2)

Nothing in fact happened until after the end of the 1983-84 school year, when there was an exchange of letters between Petitioner's then-attorney and Dean Sandalow. (Kunstler letter of July 30, 1984, App., *infra*, pp. N-1 – N-3; Sandalow letter of August 14, 1984, App., *infra*, pp. O-1 – O-2) That concluded the correspondence.

On August 24, 1984, Petitioner sued Respondent Sandalow, University President Harold Shapiro, and the University's Board of Regents, for injunctive relief to obtain an unqualified letter of academic good standing without a prior hearing, and for compensatory and punitive damages. The gravamen of the complaint was

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[5] Petitioner maintains that issuance of the requested letter of academic good standing was a ministerial act on the Dean's part, and therefore that Petitioner had a clearly-established right to such a letter. (Petition for Certiorari, p. 17, n. 9) The record is completely devoid of evidence to support Petitioner's contention. To the contrary, Dean Sandalow's *uncontroverted* affidavit recites that there is no federal or state statute, regulation, rule or convention requiring the issuance of letters of good standing. (Affidavit of Terrence Sandalow, App., *infra*, pp. A-1 – A-6)

that the defendants violated Petitioner's due process rights, his equal protection rights, his right against self-incrimination, and various other rights, by failing to issue an unqualified letter of academic good standing as Petitioner had repeatedly requested.

On August 27, 1984, the District Court entered an order to show cause why a mandatory preliminary injunction should not be entered enjoining defendants from refusing to provide Petitioner with a letter of good standing so he could enter Yale University Law School. During the proceedings Petitioner continued to resist an administrative hearing. (See, Opinion of District Court, at Petition for Certiorari, p. A35) Finally, after urging by the Court, Petitioner entered into an agreement by which the University would conduct an administrative hearing to determine whether or not he had set the blaze. By stipulation, the University through its counsel (at that time representing all defendants) assumed the burden of establishing Petitioner's responsibility for the fire by clear and convincing evidence.

After a lengthy evidentiary hearing, the Hearing Officer concluded that the University of Michigan had not, by *clear and convincing evidence*, established Petitioner's responsibility for the fire; he added that, had the burden of proof been different, the decision may have been different.[6] (Hrg. Off. Dec., pp. 41-42) Dean Sandalow subsequently issued a letter of academic good standing.

On January 2, 1986, Chief District Judge John Feikens granted Dean Sandalow's motion for summary judgment on all counts against Sandalow in his individual capacity, and denied Petitioner's cross-motion for

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[6] Petitioner was represented at the administrative hearing, and in all proceedings below, by competent counsel.

partial summary judgment, holding that Petitioner had failed as a matter of law to show any violation of a clearly-established constitutional due process right.[7] 623 F. Supp. 1571 (January 2, 1986) (Petition for Certiorari, pp. A1-A47) The United States Court of Appeals for the Sixth Circuit affirmed the District Court's judgment for Respondent in full. 827 F.2d 770 (August 28, 1987) (Petition for Certiorari, pp. A48-A49)

## REASONS FOR DENYING THE PETITION

### I.

### PETITIONER HAS FAILED TO PRESENT ANY REASONS FOR GRANTING CERTIORARI BY THE COURT.

The Decision below is inappropriate for review by the Court. Petitioner has failed to suggest a fundamental conflict between the Decisions below and applicable rulings of the Court. Nor is Petitioner able to identify an important undecided question of federal law warranting resolution by the Court. Indeed, Petitioner has not adduced a single special or important aspect of this case which would merit granting a writ of certiorari under the Court's Rules.

#### A. The Court Should Not Grant Certiorari To Decide Whether A Public University Student Has A Protected Interest In His Education, An Issue Not Even Presented By This Case.

Petitioner asserts that the instant case presents the opportunity for the Court to decide, once and for all,

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[7] The District Court also dismissed the Complaint against defendants Sandalow, Shapiro, and the Board of Regents (the latter pursuant to Petitioner's voluntary concession) in their official capacities, based on their Eleventh Amendment immunity. (Petition for Certiorari, pp. A1-A2, n. 1)

whether a university student has a protected interest in his education. (Petition for Certiorari, p. 32) Quite to the contrary, the issue is not even raised by this case. District Judge Feikens, in an opinion affirmed by the Court of Appeals, held as a matter of law that a public university student does have a protected interest in continuing his studies. (Petition for Certiorari, p. A15) Dean Sandalow did not contest that ruling (Petition for Certiorari, p. A16), and presumably neither does Petitioner. Consequently, there is no disputed issue for resolution by the Court.

### B. The Issue Of Adequate Notice Under The Due Process Clause Is Not Properly Presented For Review.

Petitioner contends that, if allowed to stand, the District Court's ruling that he received constitutionally adequate notice will jeopardize the carefully nurtured ideals of all students. (Petition for Certiorari, pp. 40-43) Petitioner has raised no question of substance or magnitude concerning the lower court rulings with regard to notice.

The limited deprivation at issue was held below to be a preliminary and temporary interference with Petitioner's continued law school education, pending the outcome of an administrative hearing proposed by Respondent, and declined by Petitioner. The minimum constitutionally required notice due Petitioner was that he be "informed that the matter is pending." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In his first letter to Petitioner, Dean Sandalow stated clearly that, because of suspicions regarding his responsibility for the fire, (unless Petitioner took and passed a polygraph examination as requested by the police) his eligibility to re-enroll would have to be deter-

mined by an administrative hearing. (Sandalow letter of May 13, 1983, App., *infra*, p. B-1)

If it is supposed that any action by Respondent effected a constitutional deprivation, then Petitioner received more than constitutionally adequate apprisal of the due process measures proposed and the question to be determined, as held below. (Petition for Certiorari, pp. A32-A34)

The question of whether constitutionally adequate notice was given does not reduce, as Petitioner suggests (Petition for Certiorari, p. 39), to a formulaic recitation of required elements.[8] Rather, constitutionally adequate notice "must be of such nature as reasonably to convey the required information, . . . . But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied." *Mullane* v. *Central Hanover Bank & Trust Co.*, *supra*, at 314-15.

Judge Feikens' finding that there was constitutionally adequate notice rests on the "practicalities and peculiarities of the case," and implicates no principles of sufficient magnitude to warrant discretionary review.

There is, in addition, a more fundamental defect in this asserted ground for review. As held by the courts below, the question of what process was due Petitioner

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[8] Petitioner maintained below that the Dean was constitutionally bound to adhere to the administrative procedures for student discipline set forth in the University of Michigan Student Handbook, as to notice and hearing. (Petition for Certiorari, pp. 15-16, n. 8, 50-53) The lower courts, following well-established precedent, held this claim to be legally untenable. (Petition for Certiorari, pp. A31-A32) An alleged failure to comply with state procedures, were it even applicable in this case, does not, by itself, violate constitutional due process. *Board of Curators, University of Missouri* v. *Horowitz*, 435 U.S. 78, 92, n. 8 (1978). Petitioner's *ad hominem* hypothesizing as to Dean Sandalow's intentions (Petition for Certiorari, pp. 52-53) is baseless and gratuitous.

is clouded by the fact that the alleged deprivation was entirely due to *Petitioner's* physical condition, and to *his* decision to reject Respondent Sandalow's request that he state his intentions *vis-à-vis* continuing his education at Michigan Law School. (Petition for Certiorari, pp. A20-A22, A28-A29, A34-A36).

Thus, any arguable injury to Petitioner above the *de minimus* level was entirely a result of his own situation and choice, not any action by Respondent Sandalow. There is no question but that from the date of the fire until at least the Spring semester of 1984, Petitioner did not attend law school because he was physically unable to do so. (Petition for Certiorari, p. A28, n. 8) There is no question but that he did not attend law school thereafter at Ann Arbor *because he did not ask to do so.* (Petition for Certiorari, p. A28)[9] It was not Respondent Sandalow's responsibility that Petitioner attend Michigan Law School if Petitioner didn't ask to do so. And Respondent can't properly be "sandbagged" by a student who doesn't propose to return, then complains that he has not been accepted. It is obvious from the parties' correspondence, appended hereto, that had Petitioner at any time following his injury told Dean Sandalow that he wished to return to the University of Michigan Law School, an administrative proceeding would have been initiated in short order by the University.

The spurious issue of constitutionally adequate notice is therefore clouded by the fact that formal pro-

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[9] The District Court concluded as a finding of fact:

> "Unfortunately, Picozzi's medical condition prevented such an early disposition of the matter. But even after he recovered, Picozzi — not Sandalow — resisted holding a hearing. *See* Prelim. Inj. Trans. at 14-18, 27-29. Picozzi cannot now complain of the delay he occasioned." (Petition for Certiorari, pp. A35-A36)

cedures, including formal notice, were never initiated because of *Petitioner's* condition and *Petitioner's* actions. It is inconceivable that Petitioner can demonstrate a constitutional issue of sufficient magnitude to warrant review by this Court, when the sole causes of any hiatus in his education were his physical disability and his own doing. One would expect the Court's discretionary review to be reserved — if there were otherwise an issue of significant jurisprudential dimensions — for those cases where there is a significant and palpable injury to a victim without redress, and not for a case where, as here, the purported "injury" is entirely a result of the "victim's" own intransigence.

### C. The Court Should Not Grant Certiorari In Order To Issue Declaratory Rules For Academic Due Process.

Petitioner's assertion that certiorari should be granted so that the Court can specify "exactly what procedures are due in what contexts" (Petition for Certiorari, p. 48) is inappropriate. The requested declaratory intervention by this Court runs fundamentally contrary to the established rule that review upon writ of certiorari is confined to cases where there are "special and important" reasons therefor. *Rice* v. *Sioux City Cemetery*, 349 U.S. 73, 74 (1954). "'Special and important reasons' imply a reach to a problem beyond the academic or episodic. This is especially true where the issues included reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion." *Id.*

Far from spawning the "disaster" that Petitioner claims (Petition for Certiorari, p. 47), the Court's opinion in *Goss* v. *Lopez*, 419 U.S. 565 (1975), ensured

the needed flexibility that academic stewardship demands:

> "All that *Goss* required was an 'informal give-and-take' between the student and the administrative body dismissing him that would, at least, give the student 'the opportunity to characterize his conduct and put it in what he deems the proper context.' *Id.*, at 584, 42 L. Ed. 2d 725, 95 S. Ct. 729. But we have frequently emphasized that '[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.' *Cafeteria Workers* v. *McElroy*, 367 U.S. 886, 895, 6 L. Ed. 2d 1230, 81 S. Ct. 1743 (1961). The need for flexibility is well illustrated by the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct."

*Board of Curators* v. *Horowitz*, *supra* at 85-86. The amount and kind of process due under *Goss* v. *Lopez* is not definitely determinable as an *a priori* matter. Rather, as Petitioner surely must know, the proper measure of minimal procedural protection is determined on a case-by-case basis, with reference to the factors announced in *Mathews* v. *Eldridge*, 424 U.S. 319, 334-35 (1976).

The courts below employed precisely such an analysis to conclude that Petitioner had received constitutionally adequate process. (Petition for Certiorari, pp. A23-A36)

## II.

## THE RULINGS BELOW ARE CORRECT AND SHOULD NOT BE DISTURBED.

### A. The Lower Courts Properly Held That There Was No Constitutional Violation.

The courts below found that the alleged deprivation of Petitioner's entitlement to an uninterrupted public university education was extremely limited. Judge Feikens held that the severity of the alleged interruption in Petitioner's education was diminished because, "Picozzi could have promptly accepted Sandalow's offer of a hearing and cleared up his status at the Law School prior to the first date on which he was physically able to return to class." (Opinion of District Court, Petition for Certiorari, p. A28)[10] The Dean did not permanently and finally bar Petitioner's continued education; "[h]e simply placed a temporary and preliminary hurdle in Picozzi's path, *pending the outcome of an administrative hearing.*" (*Id.*, Petition for Certiorari, p. A21) (emphasis in original).

The lower courts ruled that Petitioner was not entitled to a pre-deprivation hearing, as this case falls "squarely within" the exception for cases of threatened or ongoing disruption of the academic process set forth in *Goss* v. *Lopez*, *supra*, at 582-83.[11] (Petition for Cer-

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[10] Petitioner disputes the District Court's finding of fact that it was he who caused the delay in the commencement of administrative proceedings. (Petition for Certiorari, p. 46, n. 21) The Court has repeatedly abstained from reviewing findings of fact by the court below, particularly where that finding is undisturbed by an appeals court. *Rogers* v. *Lodge*, 458 U.S. 613, 623 (1982); *United States* v. *Doe*, 465 U.S. 605, 614 (1984)

[11] The Court in *Goss* stated:

> "We agree with the District Court . . . that there are recurring situations in which prior notice and hearing cannot be

(*concluded on page 15*)

tiorari, p. A26) It cannot be disputed that Respondent Law School Dean had a substantial responsibility and interest in preventing the disruption of studies and the further imperiling of students and property by the immediate readmission of a suspected dormitory arsonist, without prior determination of his culpability.

The courts below properly held that, apart from and in addition to his compliance with *Goss* v. *Lopez*, *supra*, Respondent Sandalow accorded Petitioner the full measure of process due him. (Petition for Certiorari, pp. A27-A31) Certainly there can be no denial of due process where adequate review procedures are made available to protect against erroneous deprivation. Here, Petitioner can complain of no such deprivation, since Respondent Sandalow proposed more than adequate review procedures long before any final deprivation might take place.

Dean Sandalow had a duty to the law school community to maintain order and security following an incendiary dormitory fire. He also had a responsibility to the academic community at large. As the courts below recognized, Dean Sandalow legitimately refused to misrepresent Petitioner's academic standing to other institutions. The Dean repeatedly made clear to Petitioner that, although he would confirm that Petitioner had "withdrawn while in good academic standing," an

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(*continued from page 14*)

> insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable, as the District Court indicated."

419 U.S. at 582-83.

unqualified letter as requested would have suggested to the rest of academia that Petitioner had an unqualified right to return to the University of Michigan, when in fact that was not so without an administrative hearing, which the Law School was prepared to provide. (See App., *infra*, pp. A-2, B-2, C-1, F-1)

Thus, the undisputed facts, as found by the District Court and as affirmed by the Court of Appeals, were that Respondent Sandalow acted at all times to preserve safety and order in the Law School academic community, as well as to safeguard Petitioner's legitimate due process rights. Respondent promptly informed Petitioner that, if he desired to resume his studies, his eligibility to do so would depend on the outcome of due process procedures for ascertaining his culpability for the fire, which the University would initiate. Petitioner never asked to be re-enrolled at Michigan Law School. Indeed, he was physically unable to resume his studies until almost a year after the fire. Petitioner was never expelled or otherwise disciplined. His education was not significantly interrupted except by his own doing.

The courts below found that Petitioner was apprised of the salient question regarding his status at Michigan Law School, and the procedures for resolving it. The fact that such procedures were not applied until Petitioner reluctantly agreed to them at the preliminary stage of the lawsuit is, as the District Court held, entirely a consequence of his physical incapacitation and his own intransigence.

The lower courts therefore properly ruled that Petitioner had failed as a matter of law to show any violation of a clearly established constitutional due process right.

**B. That Respondent Was Protected By Qualified Immunity Is An Independent And Unchallenged Basis For The Rulings Below.**

The lower courts correctly held that the action against Respondent Sandalow must be dismissed in any event because Sandalow is immune from damages under the doctrine of qualified immunity announced in *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982). *Petitioner fails even to advert to this separate and independent ground for the rulings below in his petition for certiorari.*

Under the doctrine of qualified immunity, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 818. Such qualified immunity is available to public school officials. *Wood* v. *Strickland*, 420 U.S. 308 (1975)

As the courts below properly recognized, Respondent Sandalow had no clearly established constitutional or statutory obligation to accord Petitioner a hearing prior to the preliminary action of notifying him that his continued enrollment, if he desired it, would be predicated on a factfinding concerning his connection with the fire.

Moreover, Petitioner's other claims against Dean Sandalow with respect to notice, the hearing, or other actions taken (or not taken), are similarly subject to a qualified immunity defense under *Harlow* v. *Fitzgerald*, *supra*. To prevail against such a defense, Petitioner would have to show that he had a clearly established constitutional right, and Dean Sandalow a clearly established constitutional responsibility, that he be

accorded a particular form of notice — despite the fact that Petitioner could not attend classes because of his injuries, and had not responded to repeated requests that he indicate his intentions relative to resuming his studies at Michigan.

To state the proposition is to answer it. To suggest that Petitioner had a clearly established constitutional right to a particular form of notice (commensurate with that required for expulsion of students, under the authority of *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961), and its progeny) when he was not under discipline, not able to resume his studies, and had indicated no intention to do so, is plainly absurd.[12]

## CONCLUSION

For the foregoing reasons, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

By: /s/ THEODORE SACHS
*Counsel of Record*
ANDREW NICKELHOFF
*Attorneys for Respondent Sandalow*

SACHS, NUNN, KATES, KADUSHIN,
O'HARE, HELVESTON & WALDMAN, P.C.
1000 Farmer Street
Detroit, Michigan 48226 (313) 965-3464

December 28, 1987

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[12] We do not address Petitioner's unmeritorious final claim, that he was a "prevailing party" entitled to attorney's fees under 42 U.S.C. § 1988, which claim relates to the other defendants below, and not to Respondent. The other defendants are not joined in the petition for certiorari. The issue of attorney's fees is not, therefore, properly raised in the petition or before the Court.

# APPENDICES TO BRIEF IN OPPOSITION

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## APPENDIX A

### AFFIDAVIT OF TERRANCE SANDALOW

***(attached to Sandalow Motion for Summary Judgment)***

*AFFIDAVIT OF TERRANCE SANDALOW*

STATE OF MICHIGAN
COUNTY OF WASHTENAW — ss.

TERRANCE SANDALOW, being first duly sworn, deposes and says as follows:

1. I make this affidavit on personal knowledge and I am competent to testify to the matters stated herein.

2. I am Dean of the University of Michigan Law School and have been Dean since July 1, 1978.

3. Prior to March 8, 1983, I did not know nor know of James M. Picozzi.

4. On that date I was informed that early that morning there had been a fire in the Law Quadrangle dormitory room of Mr. Picozzi and that he had suffered serious injuries. Later that month, I was informed by the responsible Ann Arbor Police Officer, Detective David Jachalke, that a comprehensive investigation conducted under his supervision by the Ann Arbor Police and Fire authorities and by University security employees had concluded that the fire was of incendiary origin and that Mr. Picozzi was the prime – indeed, the

only – suspect. Detective Jachalke detailed for me the evidence that had led the police to conclude that Mr. Picozzi had set the fire.

5. I was informed by Detective Jachalke that the Ann Arbor police had requested the Washtenaw County Prosecuting Attorney, William Delhey, to issue a criminal complaint against Mr. Picozzi but the prosecutor had declined to do so. Detective Jachalke informed me, however, that Prosecutor Delhey had advised him that although he did not feel at that time that a prosecution would be warranted, Detective Jachalke should request Mr. Picozzi to submit to a polygraph examination upon the completion of his medical problems. I was further informed by Detective Jachalke that the police file remained inactive with Mr. Picozzi remaining the only suspect.

6. I did not at any time accuse Mr. Picozzi of responsibility for the March 8 fire. I did, however, inform him by a series of letters that his eligibility for reenrollment depended upon an administrative hearing which would examine whether he was the person responsible for setting the fire. I also corresponded with Mr. Picozzi and later with his counsel concerning his request, first made in November, 1983, for an unqualified letter of academic good standing, which he asked me to send to the Dean of the Yale Law School. True copies of the correspondence between Mr. Picozzi and myself and between his counsel and myself are appended to his Complaint. In addition, true copies of a letter from Mr. Picozzi to me dated July 18, 1983, from me to Mr. Picozzi dated July 29, 1983 (returned unclaimed), and from Mr. Pocozzi [*sic*] to me dated December 5, 1983, are appended to this affidavit. My letters to Mr. Picozzi and his counsel accurately set forth my reasons for the actions taken by me.

7. To my knowledge and belief, there was and is no federal or state statute, regulation or rule applicable to the issuance of letters of good standing. Although such letters may be given when there is no issue as to good standing, there is no convention requiring the issuance of such letters if there is a question about the student's eligibility for enrollment or re-enrollment. In my opinion, an unqualified letter of academic good standing would be understood to connote that the institution issuing the letter would unqualifiedly accept the student for continued enrollment or re-enrollment. Prior to the 1985 Hearing Officer's Decision I regarded the requested unqualified letter of good standing, and believe others in academia would have regarded such letter, as misleading and a misrepresentation, since, though technically accurate, it would have inaccurately signified that the University of Michigan Law School would have accepted Mr. Picozzi for re-enrollment without his satisfying the due process administrative hearing which I had repeatedly offered to him.

8. The "disenrollment" of Mr. Picozzi in April 1983 by Assistant Dean Susan M. Eklund had nothing whatsoever to do with the actions which I took on behalf of the Law School relative to Mr. Picozzi's possible re-enrollment, to any administrative hearing thereon, or to the requested letter of academic good standing — as I repeatedly made clear to Mr. Picozzi when he inquired as to his status.

9. Immediately following the Decision of Hearing Officer Robert E. Guenzel, dated August 22, 1985, following the administrative hearing to which Mr. Picozzi had finally acceded following the initiation of this suit, I issued the requested letter of good standing to him

(through his counsel). I did so pursuant to what I understood to be the agreement of counsel for the University and of Mr. Picozzi, despite the hearing officer's conclusion that although the University had not sustained its assumed burden of proof by clear and convincing evidence, "If the burden of proof had been different, the decision may [have] been different." Hearing Officer's Decision, p. 41.

10. On information and belief, Mr. Picozzi has enrolled in Yale Law School for the current, 1985-86 academic year.

Further deponent sayeth not.

/s/ TERRANCE SANDALOW

*(Jurat Omitted)*

## APPENDIX B

### SANDALOW LETTER OF MAY 13, 1983

***(Complaint, Exhibit N)***

Mr. James M. Picozzi
616 Sewickley Heights Drive
Sewickley Heights Manor Drive Condo
Sewickley Heights, Pennsylvania 15143

May 13, 1983

Dear Mr. Picozzi:

I was pleased to learn from Professor Barker that your recovery is progressing well.

As you know, no criminal charges have as yet been filed in connection with the fire that was set in your room in the early morning hours on March 8. Whether or not such charges are ever filed, the Law School and the University have an independent interest in determining the identity of the person responsible, especially because the continuing presence of that individual within the community would create a serious risk to its members.

In this connection, I have been informed that the Ann Arbor police have requested that you take a polygraph test and that your father has indicated that you would be willing to do so. I am writing to notify you that if you do take a polygraph test administered or arranged by the Ann Arbor police and if that test indicates that you are not responsible for the March 8 fire, you would of course be permitted to return to the Law School in the fall term.

With regret, I must also inform you that unless you take a polygraph test, an administrative proceeding will be required to determine whether you will be permitted to re-enroll as a student. The information available to us has led me to conclude that I would not be warranted in permitting you to re-enroll without a close examination of the question whether you are the person responsible for setting the March 8 fire.

The necessity for such a proceeding would, of course, be obviated if you were to take and pass a polygraph test, and I of course hope that you will pursue that course. I would appreciate it if you would notify me of your plans within the next several weeks.

Sincerely,
/s/ Terrance Sandalow
Dean

## APPENDIX C

### SANDALOW LETTER OF JUNE 29, 1983

***(Complaint, Exhibit O)***

Mr. James M. Picozzi
616 Sewickley Heights Drive
Sewickley Heights Manor Drive Condo
Sewickley Heights, Pennsylvania 15143

June 29, 1983

Dear Mr. Picozzi:

On May 13 I wrote inquiring whether you planned to take a polygraph test administered by the Ann Arbor Police Department and notifying you that unless you took and passed such a test, it would be necessary for me to arrange for an administrative hearing to determine your eligibility to continue in School. I have not yet heard from you regarding your plans and would appreciate it if you would write or call me within the next little while. If such a proceeding is necessary, I think it is important — in your interest as well as that of the Law School — that it be held well before August 29, when the Fall Term begins. Since only eight weeks remain in the summer, it will be necessary to begin making arrangements fairly promptly if a proceeding is required.

Sincerely,
/s/ Terrance Sandalow
Dean

## APPENDIX D

### EKLUND LETTER OF JULY 20, 1983

***(Exhibit to Susan Eklund Affidavits, attached to Sandalow Motion for Summary Judgment)***

Mr. James M. Picozzi
616 Sewickley Heights Drive
Sewickley Heights Manor Drive Condo
Sewickley Heights, PA 15143

July 20, 1983

Dear Mr. Picozzi:

Dean Sandalow has advised me that you have not yet responded to his letters of May 13th and June 29th regarding your return to school. I understand that, although you have not formally contracted a room in the Lawyers Club, Diane Nafranowicz has graciously refrained from entering into a lease with another student for the room in which you had expressed interest. Space in the Club is in high demand and I will advise Ms. Nafranowicz that she may lease this room to another if we have not received a response from you by July 27, 1983.

Sincerely yours,
/s/ Susan M. Eklund
Assistant Dean

cc: Dean Sandalow
Diane Nafranowicz

# APPENDIX E

## PICOZZI LETTER OF JULY 18, 1983

***(Exhibit to Terrance Sandalow Affidavit)***

87 St. Stephen's Ln. West
Scotia, NY 12302
July 18, 1983

Mr. Terrance Sandalow
Hutchins Hall
The University of Michigan Law School
Ann Arbor, MI 48109

Dear Sir:

Let this document serve to acknowledge your letters of May 13 and June 29. While I agree that it is in the interest of all parties involved to resolve our conflict as soon as possible, I am not yet prepared to give a full response to your ultimatum. When I am, I will contact you again. Since neither you nor any Law School official bothered to visit me in the almost full month I was a patient at the University of Michigan Hospital, since it was more than two months after my injuries were sustained before you personally contacted me at all, and since I am still encased in the equivalent of a full-body cast, I hardly think you can protest this delay.

Until you hear from me again, let me admonish you against doing anything either to disparage my good name or to place duress upon my family or me. I will tolerate no further lies by University of Michigan officials.

Sincerely,
/s/ James M. Picozzi

# APPENDIX F

## SANDALOW LETTER OF JULY 29, 1983

***(Exhibit to Terrance Sandalow Affidavit)***

Mr. James M. Picozzi
87 St. Stephen's Lane West
Scotia, New York 12302

July 29, 1983

Dear Mr. Picozzi:

I am writing in response to your somewhat puzzling letter of July 18. I am not aware that there is any "conflict" between us to be resolved, nor have I issued any ultimatum to which you have been asked to respond. Neither am I aware of any lies by University of Michigan officials.

I have written that because of information we have received from the Ann Arbor police it will be necessary for us to conduct an administrative hearing to determine your eligibility to re-enroll at the Law School unless you take and pass a polygraph test administered or arranged by the Ann Arbor police. Since such a proceeding will take time to arrange, it will be necessary for me to have notice of your intentions well in advance of the beginning of the Fall Term if you wish to re-enroll at the Law School during that term. And since the opening of the Fall Term is now only one month away, it will be necessary for me to hear from you rather promptly. Of course, if you do not wish to re-enroll in the Fall Term, there is no need for your prompt response.

Sincerely,
Terrance Sandalow
Dean

bcc: Susan M. Eklund

## APPENDIX G

### PICOZZI LETTER OF NOVEMBER 7, 1983

***(Complaint, Exhibit P)***

2221 Poor Richard's Lane
Pittsburgh, PA 15237
November 7, 1983

Mr. Terrance Sandalow
Office of the Dean
Hutchins Hall
The University of Michigan Law School
Ann Arbor, MI 48109

Dear Mr. Sandalow:

I formally request a letter stating what, according to you, my academic standing is at the University of Michigan. In addition, I would like a copy of my complete transcript.

Please reply promptly, as several parties await your answer.

Sincerely,
/s/ James M. Picozzi

# APPENDIX H

## SANDALOW LETTER OF NOVEMBER 16, 1983

***(Complaint, Exhibit Q)***

Mr. James M. Picozzi
2221 Poor Richard's Lane
Pittsburgh, Pennsylvania 15237

November 16, 1983

Dear Mr. Picozzi:

I am writing in response to your letter of November 7 requesting a statement regarding your academic standing and a copy of your transcript. A copy of your transcript is enclosed.

My understanding is that you are currently on a leave of absence from the Law School, having withdrawn while in good academic standing. A question remains regarding your eligibility to re-enroll. As I wrote on May 13, 1983 and again on June 29, 1983, information that we have received from the police has raised a question regarding your responsibility for the fire in your room on March 8. My hope, as I have previously written, is that the question of your responsibility might be resolved by your taking a polygraph examination as requested by the Ann Arbor Police. Were you to take and pass such an examination, under the circumstances stated in my earlier letters, you would of course be eligible to re-enroll at the Law School. If, however, you decide against taking the examination or if you fail to pass it, a hearing would be necessary to determine your eligibility to re-enroll.

If you decide that you do wish to re-enroll at the Law School, I would appreciate it if you would notify me at least four to six weeks prior to the beginning of the term so that a decision regarding your eligibility can be made prior to the beginning of the term.

Sincerely,
/s/ Terrance Sandalow
Dean

Enc.

# APPENDIX I

## PICOZZI LETTER OF NOVEMBER 23, 1983

***(Complaint, Exhibit R)***

2221 Poor Richard's Lane
Pittsburgh, PA 15237
November 23, 1983

Mr. Terrance Sandalow
Office of the Dean
Hutchins Hall
The University of Michigan Law School
Ann Arbor, MI 48109

Dear Mr. Sandalow:

In your letter of November 16, you stated that, according to you, I am currently on a leave of absence from the University of Michigan Law School, having withdrawn while in good academic standing. I would like you to reiterate that statment of my good academic standing and send it in a letter to Dean James A. Thomas at the following address:

Yale Law School
Box 401A Yale Station
New Haven, CT 06520

Let me admonish you, sir, against editorializing. Any statement you make that in any way calls my character into question I will make you defend in a court of law.

I appreciated your prompt action on my last request and trust you will be just as prompt in this matter.

Sincerely,
/s/ James M. Picozzi

# APPENDIX J

## SANDALOW LETTER OF NOVEMBER 29, 1983

***(Complaint, Exhibit S)***

Mr. James M. Picozzi
2221 Poor Richard's Lane
Pittsburgh, Pennsylvania 15237

November 29, 1983

Dear Mr. Picozzi:

I am writing in response to your letter of November 23 requesting that I write Dean James Thomas at Yale that you are currently on a leave of absence from the University of Michigan Law School, having withdrawn while in good academic standing. I would be happy to write Dean Thomas to that effect, but believe that it would be misleading for me to do so without a further statement indicating that there is a question regarding your eligibility to re-enroll at the Law School. Since I am not certain whether you would wish me to write such a letter, I shall defer writing to Dean Thomas until I hear from you.

Sincerely,
/s/ Terrance Sandalow
Dean

## APPENDIX K

### PICOZZI LETTER OF DECEMBER 5, 1983

***(Exhibit to Terrance Sandalow Affidavit)***

Mr. Terrance Sandalow
Office of the Dean
Hutchins Hall
The University of Michigan Law School
Ann Arbor, MI 48109

Dear Sir:

I formally request, again, that you write to Dean James Thomas at the Yale Law School verifying my academic good standing. If your statement — that I am currently on a leave of absence from the University of Michigan, having withdrawn while in good academic standing — is true, then I fail to understand how it can be misleading.

Any elaboration beyond that point concerning my current situation remains solely your decision. I do not give you license to libel me. I repeat, any statement you make which in any way calls my character into question I will make you defend in a court of law. If you can prove what you say is true, and that you say it without malice, then you have nothing to fear.

To be perfectly frank, sir, I have never understood either the adversary situation you have created between us or what you hope to gain by it. Right now, I am attempting to give you a gentleman's way out. I sincerely hope you take it. The alternative, for both parties, would be much more painful — but, I believe, more damaging for you. If nothing else, I would think I have proven, in more ways than one, that I do not die easily.

Sincerely,
/s/ James M. Picozzi

## APPENDIX L

### SANDALOW LETTER OF DECEMBER 13, 1983 and enclosure *(Complaint, Exhibit T)*

Mr. James M. Picozzi
2221 Poor Richard's Lane
Pittsburgh, Pennsylvania 15237

December 13, 1983

Dear Mr. Picozzi:

A letter that merely states you are on a leave of absence from the Law School, having withdrawn while in good academic standing, while true, would be misleading in failing to disclose to Dean Thomas all that is relevant to an understanding of your status at the University of Michigan. I am unwilling to write such a letter.

I am enclosing a draft letter that I am prepared to send to Dean James Thomas, but only if you authorize me to do so. Although every fact stated in the draft letter is true, I am unwilling to send it without your express authorization. The mere fact that I might prevail in the defamation action that you threaten is not, in my view, a sufficient reason to expose either me or the University to a law suit. The defense of any such action, however frivolous the action might be, would be very costly both in my time and in the expense to the University.

To summarize, I am willing to write Dean Thomas only if I am able to include all of the information that I regard as relevant to an understanding of your status at the School and to do so only if I have your authorization to send such a letter.

Sincerely,
/s/ Terrance Sandalow
Dean

Enclosure

[*ENCLOSED DRAFT LETTER*]

Dean James A. Thomas
Yale Law School
New Haven, Connecticut 06520

Dear Jim:

James M. Picozzi has asked that I write you regarding his status at the University of Michigan Law School.

As you may know, Mr. Picozzi was injured as a result of a fire that occurred in his dormitory room during the night of March 8. Because of his injuries, he withdrew from School and has been on a leave of absence ever since. At the time of his injury, he was in good academic standing, and he remains so at the present time.

An investigation of the fire led the police to conclude that the fire was deliberately set. Although no charges have been filed, I have been informed by the police that they regard Mr. Picozzi as a suspect and that he has been asked by them to take a polygraph test.

I have informed Mr. Picozzi that if he takes and passes a polygraph test, he will be permitted to re-enroll at the Law School. I have also informed him, however, that if he decides not to take a polygraph test, or if he fails to pass one, it will be necessary for us to conduct a hearing to determine his eligibility to re-enroll.

In reporting these facts to you, I do not wish to assert, nor even to suggest, that Mr. Picozzi did set the fire in his room last March. I do not currently have sufficient information to warrant a judgment regarding the question of his responsibility.

I hope this information will be of assistance to you.

Sincerely,
TS

# APPENDIX M

## PICOZZI LETTER OF DECEMBER 26, 1983

***(Complaint, Exhibit U)***

2221 Poor Richard's Lane
Pittsburgh, PA 15237
December 26, 1983

Mr. Terrance Sandalow
Office of the Dean
Hutchins Hall
The University of Michigan Law School
Ann Arbor, MI 48109

Dear Terry:

I totally reject your proposed letter, dated December 13, to Dean Thomas. First, every statement in the letter is not true. Second, it unfairly calls my character into question, something I have warned you about repeatedly.

Indeed, sir, you have argued that you will not write a misleading letter, yet your proposed letter could hardly be more so. It gives the impression that the police have accused me of arson, which they have not. Conversely, it suggests that you do not accuse me of arson, which you most certainly do. Indeed, you are the only person who accuses me of arson.

I also am not deceived, sir, by the casual manner in which you dismiss a defamation action by me. I do not consider to be "frivolous" any such action against one who accuses me of a felony. Furthermore, I have no doubt that I would prevail in any one of a number of actions against you. Indeed, the facts that you attempt to keep me under your thumb and that you refuse to

send a supposedly "true" statement to Yale without my authorization indicate that — despite your bravado — you, too, respect my ability to prevail in a lawsuit.

However, sir, you clearly have no intention of dealing honestly with me. I, therefore, terminate our correspondence for now. After January 1, I will pursue this matter through more influential channels with other University of Michigan officials.

Sincerely,
/s/ James M. Picozzi

# APPENDIX N

## KUNSTLER LETTER OF JULY 30, 1984

***(Complaint, Exhibit V)***

Dean Terrance Sandalow
University of Michigan School of Law
Hutchins Hall
Ann Arbor, MI 48109

July 30, 1984

*Re: James M. Picozzi*

Dear Dean Sandalow,

I am writing to request that the University of Michigan Law School grant Mr. James M. Picozzi a letter of good standing, so that he may apply for admission to other law schools.

As you know, Mr. Picozzi was the victim of repeated harassment during the almost two years he spent at the University of Michigan. This harassment ranged from the infantile, *e.g.*, placement of derogatory posters about Mr. Picozzi throughout the law school; to the cruel, *e.g.*, making fun of his physical handicap; to the criminal, *e.g.*, filing a false report that Mr. Picozzi had a firearm in his possession, causing a search to be conducted of his room. Mr. Picozzi was hectored in the classroom, pushed around in the library, and harassed while in his own room. Despite numerous complaints to your office, no action was ever taken against those individuals responsible. This harassment was so obvious that Professor Yale Kamisar felt compelled to personally intervene on behalf of Mr. Picozzi, chastising one of his principal tormentors.

The fire of March 8, 1983, occurred against this background of constant hazing and official non-action. As

you also must know, Mr. Picozzi was seriously injured in the fire.

It was characteristic of Mr. Picozzi's stay at the University of Michigan that the police investigation focused solely on the possibility that Mr. Picozzi himself may have set the fire. A police investigation was conducted, and Mr. Picozzi cooperated fully. Whatever "suspicions" the police may have entertained, no prosecutorial action was ever taken against Mr. Picozzi. There was no prosecutor's information filed, nor was the case ever referred to a grand jury. There was no determination that probable cause existed to charge Mr. Picozzi with arson, and no warrant for his arrest was ever issued. The case was placed on the inactive list.

After reviewing your correspondence with Mr. Picozzi, I am unable to understand why the requested letter has not yet issued. I have reviewed your draft letter of December 13, 1983, and agree with Mr. Picozzi that it is unacceptable. First, your demand that Mr. Picozzi submit to a polygraph examination as a condition precedent to his re-enrollment is not justified by any University of Michigan rule or regulation, and is undoubtedly unconstitutional. To force Mr. Picozzi to submit to a procedure which every court in this nation has found unreliable, forcing him to prove that he did not commit a criminal act, is inconsistent with the most basic notions of due process. You cannot legally condition Mr. Picozzi's re-enrollment upon his submission to such a procedure, and in any event, there is no reason to inform other universities about what you might try to do should Mr. Picozzi attempt to re-enroll. Second, your statement, "I do not wish to assert, nor even to suggest, that Mr. Picozzi did set the fire in his room last March" is a rather disingenuous use of a

negative pregnant. Since you "do not currently have sufficient information to warrant a judgment," I would request that you omit references to that which you do not know, and avoid implying that which you state you are not trying to suggest. Lastly, your recitation of police "suspicions" about Mr. Picozzi is unwarranted. Mr. Picozzi is legally innocent of any wrongdoing and it is illegal and unconscionable for him to suffer civil disabilities because certain police officers do not share the views of the District Attorney.

I request that you draft a letter of good standing for Mr. Picozzi, *sans* rumor, hearsay, speculation, and innuendo, and submit it at your earliest convenience to this office.

Mr. Picozzi has suffered physically and mentally during the past year. He desires to resume his legal studies and commence what promises to be a brilliant career in law. I trust that you will put aside your own suspicions and grant Mr. Picozzi the chance he never had at the University of Michigan.

Because the time limit for transfer admissions to Yale University is rapidly approaching, I request your response no later than August 10, 1984.

Cordially yours,
/s/ William M. Kunstler
Attorney for James Picozzi

cc. Mr. James M. Picozzi
Mr. Roderick Daane, General Counsel
University of Michigan
Mr. Harold Shapiro, President,
University of Michigan

# APPENDIX O

## SANDALOW LETTER OF AUGUST 14, 1984

***(Complaint, Exhibit Z-1)***

William M. Kunstler, Esq.
Kunstler & Mason
13 Gay Street
New York, New York 10014

August 14, 1984

Dear Mr. Kunstler:

I am writing in response to your letter of July 30 requesting that I "grant Mr. James M. Picozzi a letter of good standing, so that he may apply for admission to other law schools."

I shall withhold detailed comment upon the various assertions in your letter, but I should say that some are inaccurate and that I have no information regarding others.

There is, however, one inaccuracy that should not be allowed to pass without correction. Contrary to your statement, I have not demanded that Mr. Picozzi submit to a polygraph examination as a condition precedent to his re-enrollment at the Law School. My letter of May 13, 1983, which I assume Mr. Picozzi has given to you, merely notes my understanding that the Ann Arbor police requested him to take such an examination. It went on to inform him that if he did not do so, an administrative proceeding would be required to determine whether he would be permitted to re-enroll as a student.

The need for such a proceeding arises because information we have received from the Ann Arbor police raises a serious question about Mr. Picozzi's responsi-

bility for the fire set in his room on the night of March 8, 1983. The failure of the local prosecutor to file a criminal charge does not, of course, obviate the need for a proceeding within the University. Picozzi's potential criminal responsibility and his eligibility to re-enroll as a student involve different questions and are governed by different procedures and standards of proof.

In these circumstances, I do not believe that I can in good conscience furnish the letter that you and Mr. Picozzi have requested. As I wrote Picozzi on November 29, a letter stating unqualifiedly that he is currently in good standing at Michigan, though technically accurate, would be seriously misleading in failing to reveal that there is a question about his eligibility to re-enroll. As a lawyer, you will surely appreciate the ethical considerations that require me to refuse to furnish such a letter.

I reqret that my absence from the country prevented as prompt a reply as you had requested.

Sincerely,
/s/ Terrance Sandalow
Dean